

PROPOSED AMENDMENT

SENATE AMENDMENTS TO H.B. 2211

(Reference to House engrossed bill)

Strike everything after the enacting clause and insert:

“Section 1. Section 15-1851, Arizona Revised Statutes, is amended to read:

15-1851. Commission for postsecondary education; purpose; report; members; terms; powers and duties; compensation; quorum; personal liability; definition

~~A. The commission for postsecondary education is established as the postsecondary review entity for this state for the conduct, supervision and coordination of the review of postsecondary education institutions in order to determine the eligibility of those institutions for student financial aid monies pursuant to the provisions of part H, subpart one of the higher education amendments of 1992 (P.L. 102-325; 106 Stat. 638; 20 United States Code section 1099a). The commission shall accomplish the purpose of this subsection through the accumulation of information, the performance of studies and the determination of compliance by the postsecondary education institutions with the provisions of part H, subpart one of the higher education amendments of 1992. The review authority of the commission shall be limited to circumstances where the United States department of education has referred an institution to the commission for review or where the United States department of education has approved the review of an institution in accordance with criteria established by the United States department of education. The commission shall keep records of its activities, and the commission shall provide information when requested to the United States secretary of education for financial and compliance audits and for institution evaluation. The scope of authority of the commission acting as a postsecondary review entity to review any educational institution is limited specifically to compliance by the institution with title IV, part H, subpart one of the higher education amendments of 1992. Any review of any~~

~~institution conducted by the commission shall be performed in the context of the institution's individual mission and purposes. The commission shall not exercise planning, policy, coordinating, supervisory, budgeting or administrative powers over any postsecondary institution in this state.~~

~~B.~~ A. The commission FOR POSTSECONDARY EDUCATION IS ESTABLISHED AND shall ~~also~~ administer the applicable programs identified under section 1203 of the higher education act amendments of 1998 (P.L. 105-244), including the leveraging educational assistance partnership program, the federal family education loan program and the Paul Douglas teacher scholarships program, and shall supervise the state guarantee agency under the higher education act amendments of 1998.

~~C.~~ B. In addition to the responsibilities prescribed in ~~subsections A and B~~ SUBSECTION A of this section, the commission shall:

1. Provide a forum to public and private postsecondary education institutions for discussion of issues of mutual interest, including the following:

(a) The postsecondary needs of unserved and underserved individuals in this state.

(b) The resources of public and private institutions, organizations and agencies that are located in this state and that are capable of providing postsecondary education opportunities.

(c) Enrollment demand and public policy options to meet statewide needs for postsecondary education services.

(d) Cooperative comprehensive instructional and capital planning.

2. Provide reports pursuant to this subsection on discussions of issues of mutual interest.

3. Coordinate and promote collaborative studies on issues of mutual interest to public and private postsecondary education institutions.

4. Compile and disseminate information to the public regarding postsecondary education opportunities in this state.

5. Prepare an annual report that summarizes the results of the commission's activities prescribed in this section and section 15-1852. The

1 annual report shall be submitted to the speaker of the house of
2 representatives, the president of the senate, the governor and the Arizona
3 state library, archives and public records by December 28.

4 ~~D.~~ C. The commission consists of the executive director of the
5 Arizona board of regents, the executive director of the state board for
6 private postsecondary education and the following additional members who
7 shall be appointed by the governor pursuant to section 38-211:

8 1. Two members who hold senior executive or managerial positions in a
9 university under the jurisdiction of the Arizona board of regents.

10 2. Two members who hold senior executive or managerial positions in a
11 community college district, one representing a community college district in
12 a county with a population of five hundred thousand persons or more and one
13 representing a community college district in a county with a population of
14 less than five hundred thousand persons.

15 3. Two members who hold senior executive or managerial positions in
16 private postsecondary institutions of higher education that are licensed
17 under title 32, chapter 30, that are located in this state, that offer
18 bachelor or higher degrees and that are accredited by a regional
19 accreditation agency approved by the United States department of education.

20 4. Two members who hold senior executive or managerial positions in
21 private postsecondary institutions of higher education that are licensed
22 under title 32, chapter 30, that are located in this state, that offer
23 vocational education programs and that are accredited by a national
24 accreditation agency approved by the United States department of education.

25 5. One member who holds a senior executive or managerial position in a
26 private cosmetology school that is licensed under title 32, chapter 5, that
27 is located in this state, that offers cosmetology programs approved by the
28 board of cosmetology and that is accredited by a national accreditation
29 agency approved by the United States department of education.

30 6. One member who holds a senior executive or managerial position in
31 an institution that is licensed under title 32, chapter 23 or under the
32 provisions of 14 Code of Federal Regulations part 147, that offers vocational

1 education programs at the postsecondary level, that is located in this state
2 and that is not an institution that is qualified under any other category.

3 7. One member who has held a senior executive or managerial level
4 position in commerce or industry in this state for at least three years
5 before the member's appointment and who is not qualified to serve under any
6 other category.

7 8. Two members who hold senior executive or managerial positions in
8 the high school education system in this state.

9 9. One member who is an owner, operator or administrator of a charter
10 school in this state.

11 ~~E.~~ D. Members of the commission appointed pursuant to subsection ~~D-~~
12 C, paragraphs 1 through 9 of this section shall serve four year terms.
13 Appointed members of the commission shall be residents of this state.
14 Appointed members of the commission at all times during their terms shall
15 continue to be eligible for appointment under the category that they were
16 appointed to represent. Terms of appointed members of the commission begin
17 on the third Monday in January. No appointed member of the commission may
18 serve more than two consecutive terms.

19 ~~F.~~ E. The executive director of the Arizona board of regents and the
20 executive director of the state board for private postsecondary education
21 serve as members of the commission during their respective terms of office
22 and are not eligible to vote with respect to the commission's review of any
23 postsecondary institution.

24 ~~G.~~ F. Members appointed pursuant to subsection ~~D-~~ C, paragraphs 1
25 through 9 of this section are eligible to receive compensation pursuant to
26 section 38-611 for each day spent in the performance of commission duties and
27 may be reimbursed for expenses properly incurred in connection with the
28 attendance at meetings or hearings of the commission.

29 ~~H.~~ G. The governor shall appoint a chairman from among the members of
30 the commission who shall serve a one year term that begins on the third
31 Monday in January.

1 ~~I. H. Except as provided in subsection J of this section,~~ A majority
2 of the members of the commission constitutes a quorum for the transaction of
3 commission business. The vote of a majority of the quorum constitutes
4 authority for the commission to act.

5 ~~J. For all purposes relating to title IV, part H, subpart one of the~~
6 ~~higher education amendments of 1992 the commission membership shall consist~~
7 ~~only of the members appointed pursuant to subsection D paragraphs 1 through 7~~
8 ~~of this section, and all commission actions taken pursuant to title IV, part~~
9 ~~H, subpart one of the higher education act of 1992 require the affirmative~~
10 ~~vote of at least six members.~~

11 ~~K. I.~~ I. Members of the commission are immune from personal liability
12 with respect to all actions that are taken in good faith and within the scope
13 of the commission's authority.

14 ~~L. J.~~ J. For the purposes of this section, "community college district"
15 means a community college district that is established pursuant to sections
16 15-1402 and 15-1403 and that is a political subdivision of this state.

17 Sec. 2. Section 15-1852, Arizona Revised Statutes, is amended to read:

18 15-1852. Additional powers and duties

19 A. In addition to the powers and duties prescribed in section 15-1851,
20 the commission for postsecondary education shall:

21 1. Meet at least four times each year.

22 2. Adopt rules to carry out the purposes of this article.

23 3. Administer and enforce ~~the provisions of~~ this article and rules
24 adopted pursuant to this article.

25 4. Keep a record of its proceedings.

26 5. Contract, on behalf of this state, with the United States secretary
27 of education for the purpose of complying with the provisions of part H of
28 the higher education amendments of 1992.

29 ~~6. Enter into agreements and contracts with state regulatory agencies~~
30 ~~or entities, accrediting bodies and other peer review systems for the purpose~~
31 ~~of complying with the provisions of title IV program eligibility reviews as~~
32 ~~set forth in part H of the higher education amendments of 1992. Agreements~~

1 ~~and contracts executed pursuant to this subsection shall be for the purpose~~
2 ~~of conducting fact-finding activities, eligibility reviews, compliance~~
3 ~~assessments and recommendations, program reviews and consumer complaint~~
4 ~~studies. The review authority of the commission shall be limited to those~~
5 ~~circumstances specified in section 15-1851, subsection A. The commission~~
6 ~~shall provide sufficient monies to the agency or contractor to perform review~~
7 ~~functions.~~

8 ~~7. Establish procedures for the performance of the title IV~~
9 ~~eligibility reviews as prescribed in part H, subpart one of the higher~~
10 ~~education amendments of 1992, the evaluation and assessment of the reviews~~
11 ~~performed, the evaluation and assessment of the postsecondary institution's~~
12 ~~initial and continuing title IV eligibility, the notification of the results~~
13 ~~of the reviews and the enforcement of an appeals process that provides for~~
14 ~~due process for postsecondary education institutions. The review authority~~
15 ~~of the commission shall be limited to those circumstances specified in~~
16 ~~section 15-1851, subsection A.~~

17 ~~8. Establish procedures by which agencies of this state that are~~
18 ~~responsible for oversight of postsecondary institutions receive notification~~
19 ~~of eligibility reviews, eligibility determinations and actions and other~~
20 ~~actions taken or planned against postsecondary institutions.~~

21 ~~9.~~ 6. Comply with ~~the provisions of~~ title 38, chapter 3, article 3.1
22 and title 39.

23 B. The commission may:

24 1. Adopt an official seal.

25 2. Contract.

26 3. Sue and be sued.

27 4. Receive, hold, make and take leases of and sell personal property
28 for the benefit of the commission.

29 5. Employ permanent or temporary personnel as the commission deems
30 necessary to carry out this article. The commission may designate the duties
31 of these personnel. The commission employees are subject to title 41,
32 chapter 4, articles 5 and 6.

1 6. Conduct investigations, hold hearings and determine methods of
2 enforcement of ~~the provisions of~~ this article.

3 7. Issue subpoenas to compel the attendance of witnesses and the
4 production of documents, administer oaths, take testimony, hear proof and
5 receive exhibits into evidence.

6 8. Establish policy centers under its control to conduct studies.

7 9. Coordinate and promote studies of interest to postsecondary
8 institutions in this state.

9 C. The commission is exempt from title 41, chapter 6 but shall adopt
10 rules in a manner substantially similar to title 41, chapter 6.

11 Sec. 3. Section 15-1853, Arizona Revised Statutes, is amended to read:
12 15-1853. Funding; federal monies; postsecondary education fund;
13 report

14 A. The postsecondary education fund is established consisting of:

15 1. Monies appropriated by the legislature.

16 2. Monies received from state agencies and political subdivisions of
17 this state.

18 3. Monies received from the United States government, including monies
19 received from the United States department of education pursuant to
20 subsection B of this section.

21 4. Gifts, grants and donations received from any private source to
22 carry out the duties and responsibilities of the commission.

23 B. The commission may receive monies distributed by the United States
24 department of education for the reimbursement of the costs of performing
25 review requirements. The costs may include expenses for ~~the instruction of~~
26 ~~personnel needed to serve the purpose of section 15-1851, subsection A,~~ the
27 supplementation of existing review functions, work performed by
28 subcontractors or consultants in connection with the review functions of the
29 commission and any other administrative expenses necessary for compliance
30 with part H, subpart one of the higher education amendments of 1992. No more
31 than thirteen per cent of amounts received by the commission from the United

1 States department of education may be utilized for administrative purposes by
2 the commission.

3 C. The commission shall administer the fund in compliance with the
4 requirements of this article. The commission shall separately account for
5 monies received from each source listed in subsection A of this section and
6 may establish accounts and subaccounts of the fund as necessary to carry out
7 the requirements of this subsection.

8 D. Monies obtained pursuant to subsection A, paragraphs 1 through 3 of
9 this section are subject to legislative appropriation. The commission shall
10 not use these monies for purposes other than those designated by special line
11 items for which the monies are received.

12 E. Monies obtained pursuant to subsection A, paragraph 4 of this
13 section are continuously appropriated. These monies shall be used in
14 accordance with the requests of the donor. If no request is specified, the
15 monies may be used for additional responsibilities of the ~~board~~ COMMISSION
16 prescribed in section 15-1851, subsection ~~C~~ B and section 15-1852,
17 subsection B, paragraphs 8 and 9.

18 F. The commission shall report quarterly to the joint legislative
19 budget committee on fund deposits and expenditures.

20 Sec. 4. Section 15-1854, Arizona Revised Statutes, is amended to read:

21 15-1854. Private postsecondary education student financial
22 assistance program; private postsecondary education
23 student financial assistance fund; definition

24 A. A private postsecondary education student financial assistance
25 program is established. The commission shall develop, implement and
26 administer the program. A student who obtains an associate degree from a
27 community college district or from a community college under the jurisdiction
28 of an Indian tribe in this state that meets the same accreditation standards
29 as a community college district and who registers for enrollment as a
30 full-time student in a baccalaureate program at a private, nationally or
31 regionally accredited four year degree granting college or university
32 chartered in this state is eligible to submit an application to the

1 commission for participation in the program. The commission shall establish
2 eligibility criteria for the program including financial need and academic
3 merit, shall develop application forms, procedures and deadlines and shall
4 select qualifying students each year for participation in the program.
5 Participating students shall receive an award in an amount of up to two
6 thousand dollars annually ~~for~~ not to exceed two years ~~and~~ OR four thousand
7 dollars to be used to pay all or a portion of the tuition and fees charged at
8 the private, accredited four year college or university.

9 B. A private postsecondary education student financial assistance fund
10 is established consisting of legislative appropriations. The commission
11 shall administer the fund. Monies in the fund are exempt from the provisions
12 of section 35-190 relating to lapsing of appropriations. The commission
13 shall make awards for payment of tuition at eligible colleges or universities
14 to students who are selected to participate in the private postsecondary
15 education student financial assistance program pursuant to subsection A of
16 this section.

17 C. The commission shall develop a program evaluation procedure in
18 order to determine the effectiveness of the private postsecondary education
19 student financial assistance program in shifting students who would have
20 otherwise attended a public four year college or university to private four
21 year degree granting colleges or universities.

22 D. A student who fails to receive a baccalaureate degree within a
23 three year period of receipt of the program award shall reimburse the private
24 postsecondary education student financial assistance fund for all awards
25 received pursuant to subsection A of this section. ON RECEIPT OF SUPPORTING
26 DOCUMENTATION FROM THE STUDENT, FOR GOOD CAUSE SHOWN THE COMMISSION MAY
27 PROVIDE FOR EXTENSIONS OF THE THREE YEAR PERIOD TO OBTAIN A BACCALAUREATE
28 DEGREE.

29 E. For the purposes of this section, "community college district"
30 means a community college district that is established pursuant to sections
31 15-1402 and 15-1403 and that is a political subdivision of this state.

32 Sec. 5. Section 15-1855, Arizona Revised Statutes, is amended to read:

15-1855. Postsecondary education grant program; fund; program
termination; definition

A. The commission on postsecondary education shall develop, implement and administer a postsecondary education grant program. The commission shall develop application forms, procedures and deadlines and shall select eligible students each year for participation in the postsecondary education grant program. The commission may establish partnerships with qualifying schools for the administration of the postsecondary education grant program. Participating full-time students shall receive a grant in an amount of two thousand dollars annually for a maximum of four calendar years to be used to pay all or a portion of the following:

1. The tuition charged at a qualifying school.
2. The cost of books required for classes at a qualifying school.
3. The fees charged at a qualifying school.

B. The amount of a grant awarded to a participating part-time student enrolled ~~in at least six credit hours~~ AT LEAST HALF-TIME FOR THE ACADEMIC YEAR AS DEFINED IN 20 UNITED STATES CODE SECTION 1088 shall be prorated in accordance with the part-time status of the student.

C. Employees of private postsecondary institutions and family members of employees of private postsecondary institutions are not eligible to receive a postsecondary education grant pursuant to this section if the employee or family member is eligible for tuition reimbursement or a tuition waiver as a benefit of employment.

D. A student who has a baccalaureate degree from ~~the qualifying school~~ ANY POSTSECONDARY EDUCATIONAL INSTITUTION is not eligible to receive postsecondary education grant monies pursuant to this section.

E. Students who provide satisfactory proof to the commission that the student has met each of the following criteria are eligible to submit an application for consideration by the commission for a grant under the postsecondary education grant program:

- ~~1. The student meets at least one of the following criteria:~~
 - ~~(a) Has graduated from a public or private high school in this state.~~

~~(b) Has completed the equivalent of grade twelve in a home school program.~~

~~(c) Has obtained a general equivalency diploma in this state.~~

~~(d) Is currently a resident of this state and has been a resident of this state for at least the past twelve months.~~

~~(e) Is a member of the military service of the United States stationed in this state or the spouse or dependent of a member of the military service of the United States stationed in this state.~~

1. THE STUDENT EITHER:

(a) IS CURRENTLY A RESIDENT OF THIS STATE AND HAS BEEN A RESIDENT OF THIS STATE FOR AT LEAST THE PAST TWELVE MONTHS.

(b) IS A MEMBER OF THE MILITARY SERVICE OF THE UNITED STATES STATIONED IN THIS STATE OR THE SPOUSE OR DEPENDENT OF A MEMBER OF THE MILITARY SERVICE OF THE UNITED STATES STATIONED IN THIS STATE.

2. The student has met the qualifications adopted by the commission. The commission shall adopt minimum qualifications that are comparable to the admissions standards established by the Arizona board of regents for Arizona public universities.

3. The student registers for enrollment as a student in a baccalaureate program at a nationally or regionally accredited private postsecondary educational institution in this state that awards four year baccalaureate degrees.

4. The student has provided high school transcripts as proof of graduation if the student has graduated from a public or private high school. If high school records no longer exist for a student or after every reasonable effort has been made to obtain official records, the student may submit a letter certified by the high school from which the student graduated or the original high school diploma.

5. The student has completed and submitted a free application for federal student aid.

6. The student is a citizen or legal resident of the United States or is otherwise lawfully present in the United States.

1 7. IF THE STUDENT IS ELIGIBLE TO APPLY FOR MONIES FROM THE PRIVATE
2 POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE FUND ESTABLISHED BY
3 SECTION 15-1854, THE STUDENT SHALL APPLY FOR AND RECEIVE MONIES FROM THE
4 PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE FUND BEFORE THE
5 STUDENT IS ELIGIBLE TO APPLY FOR A GRANT FROM THE POSTSECONDARY EDUCATION
6 GRANT FUND ESTABLISHED BY THIS SECTION.

7 F. The postsecondary education grant fund is established consisting of
8 legislative appropriations. The commission shall administer the fund.
9 Monies in the fund are continuously appropriated and are exempt from the
10 provisions of section 35-190 relating to lapsing of appropriations. The
11 commission shall make awards for payment of tuition at qualifying schools to
12 students who are selected to participate in the postsecondary education grant
13 program pursuant to subsection A of this section.

14 G. If the amount of monies available for postsecondary education
15 grants in any fiscal year is insufficient to provide grants to all eligible
16 applicants, the commission shall award grants to eligible students in the
17 order in which the applications were received by the commission, except that
18 priority shall be given to qualifying students who received a grant in the
19 previous fiscal year and who are still in good academic standing at the same
20 qualifying school. The commission shall maintain a waiting list for all
21 other applicants.

22 H. A student who fails to receive a baccalaureate degree within a five
23 year period of receipt of the program award shall reimburse the postsecondary
24 education grant fund for all awards received pursuant to subsection A of this
25 section. ON RECEIPT OF SUPPORTING DOCUMENTATION FROM THE STUDENT, FOR GOOD
26 CAUSE SHOWN THE COMMISSION MAY PROVIDE FOR EXTENSIONS OF THE FIVE YEAR PERIOD
27 TO OBTAIN A BACCALAUREATE DEGREE.

28 I. The commission shall submit an annual report to the governor, the
29 president of the senate, the speaker of the house of representatives and the
30 joint legislative budget committee that includes a detailed description of
31 the amount of monies distributed under the postsecondary education grant
32 program during the previous fiscal year and that includes the total number of

1 qualified applicants for grants, the total number of grants awarded, the
2 qualifying schools attended by grant recipients and the total number of
3 qualified applicants who were placed on the waiting list. The commission
4 shall provide a copy of this report to the secretary of state and the
5 director of the Arizona state library, archives and public records.

6 J. If the commission is notified by a qualifying school that a student
7 who has received a postsecondary education grant is no longer in good
8 academic standing at the qualifying school, the commission shall immediately
9 discontinue the grant and the student shall reimburse the postsecondary
10 education grant fund for any unused portion or any unlawfully used portion of
11 a grant received pursuant to subsection A of this section.

12 K. The commission shall develop a marketing strategy that is designed
13 to provide information about the postsecondary education grant program to all
14 high school students in this state.

15 L. The program established by this section ends on July 1, 2016
16 pursuant to section 41-3102.

17 M. For the purposes of this section, "qualifying school" means a
18 nationally or regionally accredited private postsecondary educational
19 institution in this state that offers four year baccalaureate degrees.

20 Sec. 6. Section 15-1871, Arizona Revised Statutes, is amended to read:

21 15-1871. Definitions

22 In this article, unless the context otherwise requires:

23 1. "Account" means an individual trust account in the fund established
24 as prescribed in this article.

25 2. "Account owner" means the person who enters into a tuition savings
26 agreement pursuant to this article, who is an account owner within the
27 meaning of section 529 of the internal revenue code and who is designated at
28 the time an account is opened as having the right to withdraw monies from the
29 account before the account is disbursed to or for the benefit of the
30 designated beneficiary.

31 3. "Commission" means the commission for postsecondary education
32 established by section 15-1851.

1 4. "Committee" means the family college savings program oversight
2 committee.

3 5. "Designated beneficiary" means a person who qualifies as a
4 designated beneficiary under section 529 of the internal revenue code and,
5 except as provided in section 15-1875, subsections ~~R~~ P and ~~S~~ Q, with
6 respect to an account, who is designated at the time the account is opened as
7 the person whose higher education expenses are expected to be paid from the
8 account or, if this designated beneficiary is replaced in accordance with
9 section 15-1875, subsections ~~E, F and G~~ D, E AND F, the replacement
10 beneficiary.

11 6. "Eligible educational institution" means an institution of higher
12 education that qualifies under section 529 of the internal revenue code as an
13 eligible educational institution.

14 7. "Financial institution" means any bank, commercial bank, national
15 bank, savings bank, savings and loan association, credit union, insurance
16 company, brokerage firm or other similar entity that is authorized to do
17 business in this state.

18 8. "Fund" means the family college savings program trust fund that
19 constitutes a public instrumentality of this state AND THAT IS established by
20 section 15-1873.

21 9. "Member of the family" means any of the following:

22 (a) A son or daughter of a person or a descendant of the son or
23 daughter of the person.

24 (b) A stepson or stepdaughter of a person.

25 (c) A brother, sister, stepbrother or stepsister of a person. For the
26 purposes of this subdivision, "brother" and "sister" includes a brother or
27 sister by the half-blood.

28 (d) The father or mother of a person or the ancestor of the father or
29 mother of a person.

30 (e) A stepfather or stepmother of a person.

1 (f) A son or daughter of a person's brother or sister. For the
2 purposes of this subdivision, "brother" and "sister" includes a brother or
3 sister by the half-blood.

4 (g) A brother or sister of the person's father or mother. For the
5 purposes of this subdivision, "brother" and "sister" includes a brother or
6 sister by the half-blood.

7 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law,
8 brother-in-law or sister-in-law of a person.

9 (i) The spouse of a person or the spouse of any individual described
10 in this paragraph.

11 (j) A first cousin of a person.

12 (k) Any individual who meets the criteria for family membership
13 described in this paragraph as a result of legal adoption.

14 10. "Nonqualified withdrawal" means a withdrawal from an account other
15 than one of the following:

16 (a) A qualified withdrawal.

17 (b) A withdrawal made as the result of the death or disability of the
18 designated beneficiary of an account.

19 (c) A withdrawal that is made on the account of a scholarship, or the
20 allowance or payment described in section 135(d)(1)(B) or (C) of the internal
21 revenue code, and that is received by the designated beneficiary, but only to
22 the extent of the amount of this scholarship, allowance or payment.

23 (d) A rollover or change of designated beneficiary.

24 11. "Person" means an individual, an individual's legal representative
25 or any other legal entity authorized to establish a savings account under
26 section 529 of the internal revenue code and the corresponding regulations.

27 12. "Program" means the family college savings program **THAT IS**
28 established under this article **AND** that constitutes a qualified tuition
29 program as defined in section 529 of the internal revenue code.

30 13. "Qualified higher education expenses" means tuition, fees, books,
31 supplies, room and board and equipment required for enrollment or attendance
32 of a designated beneficiary at an eligible educational institution and

1 expenses for special needs services in the case of a special needs
2 beneficiary that are incurred in connection with enrollment or attendance, if
3 these expenses meet the definition of qualified higher education expenses in
4 section 529 of the internal revenue code.

5 14. "Qualified withdrawal" means a withdrawal from an account to pay
6 the qualified higher education expenses of the designated beneficiary of the
7 account, but only if the withdrawal is made in accordance with this article.

8 15. "Section 529 of the internal revenue code" means section 529 of the
9 internal revenue code of 1986, as amended, and the final regulations issued
10 pursuant to that section.

11 16. "Trust interest" means an account owner's interest in the fund
12 created by a tuition savings agreement for the benefit of a designated
13 beneficiary.

14 17. "Tuition savings agreement" means an agreement between the
15 commission, as trustee of the fund, and an account owner that creates an
16 interest in the fund and that provides for participation in the program.

17 Sec. 7. Section 15-1874, Arizona Revised Statutes, is amended to read:

18 15-1874. Use of contractor as account depository and manager

19 A. The commission shall implement the operation of the program through
20 the use of one or more financial institutions to act as the depositories of
21 the fund and managers of the program. Under the program, persons may submit
22 applications for enrollment in the program and establish accounts in the fund
23 at the financial institution. Monies paid by account owners to the fund for
24 deposit in accounts maintained by the fund at a financial institution shall
25 be paid to the financial institution as an agent of the fund and the tuition
26 savings agreements shall provide that all monies paid by account owners to
27 fund accounts held at financial institutions are being paid to the fund.

28 B. The committee shall solicit proposals from financial institutions
29 to act as the depositories of fund monies and managers of the program.
30 Financial institutions that submit proposals must describe the financial
31 instruments that will be held in accounts. The commission shall select
32 proposals from financial institutions to act as depositories and managers,

1 and ~~that~~ the solicitation and selection process is exempt from the
2 procurement code requirements of title 41, chapter 23.

3 C. On the recommendation of the committee, the commission shall select
4 the financial institution or institutions to implement ~~the operation of~~ the
5 program from among bidding financial institutions that demonstrate the most
6 advantageous combination, both to potential program participants and this
7 state, of the following factors:

8 1. Financial stability and integrity.

9 2. The safety of the investment instruments being offered, taking into
10 account any insurance provided with respect to these instruments.

11 3. The ability of the investment instruments to track estimated costs
12 of higher education as calculated by the commission and provided by the
13 financial institution to the account holder.

14 4. The ability of the financial institutions, directly or through a
15 subcontract, to satisfy record keeping and reporting requirements.

16 5. The financial institution's plan for promoting the program and the
17 investment it is willing to make to promote the program.

18 6. The fees, if any, proposed to be charged to persons for maintaining
19 accounts.

20 7. The minimum initial deposit and minimum contributions that the
21 financial institution will require for the investment of fund monies and the
22 willingness of the financial institution to accept contributions through
23 payroll deduction plans and other deposit plans.

24 8. Any other benefits to this state or its residents included in the
25 proposal, including an account opening fee payable to the commission by the
26 account owner and an additional fee from the financial institution for
27 statewide program marketing by the commission.

28 D. The commission shall enter into a contract with a financial
29 institution, or except as provided in subsection E of this section, contracts
30 with financial institutions, to serve as program managers and depositories.
31 Program management contracts shall provide the terms and conditions by which

1 financial institutions shall sell interests in the fund to account owners,
2 invest monies in the fund and manage the program.

3 E. The commission may select more than one financial institution and
4 investment for the program if both of the following conditions exist:

5 1. The United States internal revenue service has provided guidance
6 that giving a contributor a choice of two investment instruments under a
7 state plan will not cause the plan to fail to qualify for favorable tax
8 treatment under section 529 of the internal revenue code.

9 2. The commission concludes that the choice of instrument vehicles is
10 in the best interest of college savers and will not interfere with the
11 promotion of the program.

12 F. A program manager shall:

13 1. Take all action required to keep the program in compliance with the
14 requirements of this article and all action not contrary to this article or
15 its contract to manage the program so that it is treated as a qualified
16 tuition plan under section 529 of the internal revenue code.

17 2. Keep adequate records of each of the fund's accounts, keep each
18 account segregated from each other account and provide the commission with
19 the information necessary to prepare statements required by section 15-1875,
20 subsections ~~0, P and Q~~ M, N AND O or file these statements on behalf of the
21 commission.

22 3. Compile and total information contained in statements required to
23 be prepared under section 15-1875, subsections ~~0, P and Q~~ M, N AND O and
24 provide these compilations to the commission.

25 4. If there is more than one program manager, provide the commission
26 with this information to assist the commission to determine compliance with
27 section 15-1875, subsection ~~N~~ L.

28 5. Provide representatives of the commission, including other
29 contractors or other state agencies, access to the books and records of the
30 program manager to the extent needed to determine compliance with the
31 contract.

1 6. Hold all accounts in the name of and for the benefit of the fund
2 and this state.

3 G. Any contract executed between the commission and a financial
4 institution pursuant to this section shall be for a term of at least three
5 years and not more than seven years.

6 H. The commission may terminate a contract with a financial
7 institution at any time for good cause on the recommendation of the
8 committee. If a contract is terminated pursuant to this subsection, the
9 commission shall take custody of accounts held at that financial institution
10 and shall seek to promptly transfer the accounts to another financial
11 institution that is selected as a program manager and into investment
12 instruments as similar to the original investments as possible.

13 I. If the commission determines not to renew the appointment of a
14 financial institution as a program manager, the commission may take action
15 consistent with the interests of the program and the accounts and in
16 accordance with its duties as the trustee of the fund, including termination
17 of all services or continuation of certain management and administrative
18 services of that financial institution for accounts of the program managed by
19 that financial institution during its term as a program manager, if any
20 continuation of services is only permitted under the following conditions:

21 1. The commission and the financial institution ~~enters~~ ENTER into a
22 written agreement specifying the rights of the program and the commission and
23 the responsibilities of the financial institution, including the standards
24 that continue to be applicable to the accounts as accounts of the program.

25 2. Any services provided by the financial institution to accounts
26 continue to be subject to the control of the commission as the trustee of the
27 fund with responsibility of all accounts of the program.

28 Sec. 8. Section 15-1875, Arizona Revised Statutes, is amended to read:

29 15-1875. Program requirements

30 A. The program shall be operated through the use of accounts in the
31 fund established by account owners. Payments to the fund for participation
32 in the program shall be made by account owners pursuant to tuition savings

1 agreements. An account may be opened by any person who desires to invest in
2 the fund and to save to pay qualified higher education expenses by satisfying
3 each of the following requirements:

4 1. Completing an application in the form prescribed by the
5 commission. The application shall include the following information:

6 (a) The name, address and social security number or employer
7 identification number of the contributor.

8 (b) The name, address and social security number of the account owner
9 if the account owner is not the contributor.

10 (c) The name, address and social security number of the designated
11 beneficiary.

12 (d) The certification relating to no excess contributions required by
13 subsection ~~N~~ L.

14 (e) Any other information that the commission may require.

15 2. Paying the one-time application fee established by the commission.

16 3. Making the minimum contribution required by the commission or by
17 opening an account.

18 4. Designating the type of account to be opened if more than one type
19 of account is offered.

20 B. Any person may make contributions to an account after the account
21 is opened.

22 C. Contributions to accounts may be made only in cash.

23 ~~D. Account owners may withdraw all or part of the balance from an~~
24 ~~account on sixty days' notice, or a shorter period as may be authorized by~~
25 ~~the commission, under rules prescribed by the commission. These rules shall~~
26 ~~include provisions that will generally enable the commission or program~~
27 ~~manager to determine if a withdrawal is a nonqualified withdrawal or a~~
28 ~~qualified withdrawal. The rules may, but need not, require one or more of~~
29 ~~the following:~~

30 ~~1. Account owners seeking to make a qualified withdrawal or other~~
31 ~~withdrawal that is not a nonqualified withdrawal shall provide~~

~~certifications, copies of bills for qualified higher education expenses or other supporting material.~~

~~2. Qualified withdrawals from an account shall be made only by a check payable as designated by the account owner.~~

~~3. Withdrawals not meeting certain requirements shall be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner must seek refunds of penalties, if any, directly from the commission.~~

~~E.~~ D. An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the commission.

~~F.~~ E. On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

~~G.~~ F. Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate either of the following:

1. Subsection ~~N~~ L, relating to excess contributions.
2. Subsection ~~K~~ I, relating to investment choice.

~~H. In the case of any nonqualified withdrawal from an account, a penalty may be imposed if the penalty is required for purposes of qualifying the program as a qualified tuition program under section 529 of the internal revenue code. The commission may adopt rules to establish the parameters for the assessment of penalties. Any penalties assessed shall be paid to the commission for use in operating and marketing the program and for student financial aid.~~

~~I.~~ G. Each account shall be maintained separately from each other account under the program.

~~J.~~ H. Separate records and accounting shall be maintained for each account for each designated beneficiary.

1 ~~K.~~ I. No contributor to, account owner of or designated beneficiary
2 of any account may direct the investment, within the meaning of section 529
3 of the internal revenue code, of any contributions to an account or the
4 earnings from the account.

5 ~~L.~~ J. If the commission terminates the authority of a financial
6 institution to hold accounts and accounts must be moved from that financial
7 institution to another financial institution, the commission shall select the
8 financial institution and type of investment to which the balance of the
9 account is moved unless the internal revenue service provides guidance
10 stating that allowing the account owner to select among several financial
11 institutions that are then contractors would not cause a plan to cease to be
12 a qualified tuition plan.

13 ~~M.~~ K. Neither an account owner nor a designated beneficiary may use
14 an interest in an account as security for a loan. Any pledge of an interest
15 in an account is of no force and effect.

16 ~~N.~~ L. On the recommendation of the committee, the commission shall
17 adopt rules to prevent contributions on behalf of a designated beneficiary in
18 excess of those necessary to pay the qualified higher education expenses of
19 the designated beneficiaries. The rules shall address the following:

20 1. Procedures for aggregating the total balances of multiple accounts
21 established for a designated beneficiary.

22 2. The establishment of a maximum total balance for the purpose of
23 prohibiting contributions to accounts established for a designated
24 beneficiary if the contributions would cause the maximum total balance to be
25 exceeded.

26 3. The commission shall review the quarterly reports received from
27 participating financial institutions and certify that the balance in all
28 qualified tuition programs, as defined in section 529 of the internal revenue
29 code, of which that person is the designated beneficiary does not exceed the
30 lesser of:

31 (a) A maximum college savings amount established by the commission
32 from time to time.

1 (b) The cost in current dollars of qualified higher education expenses
2 that the contributor reasonably anticipates the designated beneficiary will
3 incur.

4 4. Requirements that any excess contributions with respect to a
5 designated beneficiary be promptly withdrawn in a nonqualified withdrawal or
6 rolled over to another account in accordance with this section.

7 ~~Q.~~ M. If there is any distribution from an account to any person or
8 for the benefit of any person during a calendar year, the distribution shall
9 be reported to the internal revenue service and the account owner or the
10 designated beneficiary to the extent required by federal law.

11 ~~P.~~ N. The financial institution shall provide statements to each
12 account owner at least once each year within thirty-one days after the twelve
13 month period to which they relate. The statement shall identify the
14 contributions made during a preceding twelve month period, the total
15 contributions made through the end of the period, the value of the account as
16 of the end of this period, distributions made during this period and any
17 other matters that the commission requires be reported to the account owner.

18 ~~Q.~~ O. Statements and information returns relating to accounts shall
19 be prepared and filed to the extent required by federal or state tax law.

20 ~~R.~~ P. A state or local government or organizations described in
21 section 501(c)(3) of the internal revenue code may open and become the
22 account owner of an account to fund scholarships for persons whose identity
23 will be determined after an account is opened.

24 ~~S.~~ Q. In the case of any account described in subsection ~~R.~~ P, the
25 requirement that a designated beneficiary be designated when an account is
26 opened does not apply and each person who receives an interest in the account
27 as a scholarship shall be treated as a designated beneficiary with respect to
28 the interest.

29 ~~T.~~ R. Any social security numbers, addresses or telephone numbers of
30 individual account holders and designated beneficiaries that come into the
31 possession of the commission are confidential, are not public records and
32 shall not be released by the commission.

~~4.~~ S. An account owner may transfer ownership rights to another eligible account owner.

~~V.~~ T. An account owner may designate successor account owners.

Sec. 9. Repeat

Section 41-3008.14, Arizona Revised Statutes, is repealed.

Sec. 10. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3010.24, to read:

41-3010.24. Commission for postsecondary education; termination
July 1, 2010

A. THE COMMISSION FOR POSTSECONDARY EDUCATION TERMINATES ON JULY 1, 2010.

B. TITLE 15, CHAPTER 14, ARTICLE 5 IS REPEALED ON JANUARY 1, 2011.

Sec. 11. Purpose

Pursuant to section 41-2955, subsection B, Arizona Revised Statutes, the legislature continues the commission for postsecondary education to:

1. Conduct, supervise and coordinate the review of public and private postsecondary education institutions in this state to determine their eligibility for student financial aid monies.

2. Administer specifically identified federal and state financial aid programs.

3. Provide a forum to public and private postsecondary education institutions for discussion of issues of mutual interest.

4. Coordinate and promote studies of interest to postsecondary institutions.

5. Provide information to the public on postsecondary education opportunities in this state.

Sec. 12. Retroactivity

Sections 9 and 10 of this act are effective retroactively to July 1, 2008.”

Amend title to conform

5/2/08
10:50 AM
S: DW/jas

ROBERT "BOB" BURNS